IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 6845 of 2005

Between:

1 M/s Annapurna Modern Rice Mill, Tarlipeta Village,

Kota Bommali Mandal, Srikakulam District,

Rep. by its Proprietor Sri Boina Eswara Rao,

S/o Nana Rao, age 42 years, Occ: Business,

R/o Kotabommali Village and Mandal, Srikakulam District.
2 Sri Boina Eswara Rao, s/o Nana Rao,
R/o Kotabommali Village and Mandal, Srikakulam District.

..... PETITIONERS

AND

1 Andhra Pradesh State Finance Corporation,

Having its Head Office at P.B.No. 165, D.No.5-9-194,
Chirag Ali Lane, Hyderabad, rep. by its General Manager,
2 The Andhra Pradesh State Finance Corporation,

P.B.No.7, D.No. 4-1-139/1, Palakonda Road,
Srikakulam Branch, Srikakulam,

Rep. by its Senior Branch Manager.
3 J. Manmadha Rao, S/o Tavudu,
Main Road, Tekkali, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ or direction declaring action of the 2nd respondent in issuing notice under section 29 of the SFC Act dated 3-1-

2005 and conducting the auction on 9-2-2005 as illegal, arbitrary and consequently direct the 2nd respondent to consider the application of the petitioner under OTS.

Counsel for the Petitioner :Mr.O.MANOHER REDDY

Counsel for the Respondents No.1 and 2: Mr.Y.N.LOHITA

Counsel for the Respondents No.3 : Mr. V.L.N.G.K. MURTHY

The Court at the stage of admission made the following :

ORDER:

This writ petition is filed by the petitioner, which is an industrial concern and its promotor aggrieved by the action of the respondent-Corporation.

It is stated that the petitioner borrowed an amount of Rs.17,66,000/- on 20-10-1999 for setting up of an industrial unit vide Annapurna Modern Rice Mill, which is repayable in 25 quarterly instalments of Rs.70,000/- each, and the amount payable towards last instalment is Rs.86,000/-. It is stated that at the time of granting of loan, the 2nd respondent has assessed the value of the assets including the working capital of Rs.7,01,000/- to a tune of

Rs. 32,38,000/-. According to the petitioner, though he faced serious difficulties in view of the continuous drought and the difficulty in running the rice mill, he paid an amount of

Rs. 5,75,000/-. As the petitioner was unable to pay the instalments and has become a defaulter, he intended to avail the one time settlement announced by the Corporation and accordingly, participated in the negotiations and offered initially Rs.16.00 lakhs in full settlement of the entire loan, and later enhanced to Rs.18.00 lakhs. However, the Corporation insisted the petitioner to pay Rs.23.94 lakhs, as the petitioner was not in a position to pay the said amount the settlement failed. Accordingly, the respondent-Corporation issued a letter dated 21-12-2004 intimating the petitioner's claim for one time settlement as rejected. Thereafter, it is stated that though the period of one time settlement scheme has not expired as it was extended up to

31-03-2005, however, the respondent-Corporation issued a notice in the month of January, 2005 proposing to dispose of the industrial concern of the petitioner and in that process, the sale was effected in February, 2005 for a sum of Rs.24,05,000/-. But according to the petitioner, the value of the industrial concern is more than Rs.40.00 lakhs. Therefore, the said action of the respondents is illegal and without

jurisdiction and the petitioner has come up with the present writ petition seeking to set aside the sale and to conduct fresh sale by issuing a fresh notification.

A counter affidavit has been filed on behalf of the respondent-Corporation. While disputing and denying the allegations, it was contended by the Standing Counsel for the respondents that though the petitioner participated in the negotiations for settlement under OTS scheme the petitioner offered less than the principal amount payable as on 01-08-2004. Later though the said amount was increased to Rs.18.00 lakhs, the Corporation did not accept the same as the total liability was Rs.26,64,449/-. It is also stated that as the negotiations failed and the OTS scheme was rejected, the Corporation had proceeded by issuing a sale notice dated 28-12-2004 and accordingly it was published in Eenadu Newspaper and in response to the notice two parties participated in the auction and the highest offer given by the bidders was Rs.24,05,000/- and the same was accepted. It is further stated that the collateral security furnished by the third party was also proceeded with and the amount was realized by the Corporation.

Heard both sides and considered the material on record.

Admittedly, the petitioner borrowed certain amount for establishment of the industrial unit and committed default in payment of instalments as agreed to. Though under OTS scheme, the petitioner was given an opportunity for the settlement of the amount and the payment of the same, there was no agreement between the parties and therefore, the said scheme as offered by the petitioner was rejected by giving a communication dated 21-12-2004. In view of the rejection of OTS scheme as claimed by the petitioner, the respondent Corporation proceeded against the property and sold to the highest bidder. Though the petitioner claimed that the sale offer accepted by the Corporation was under lower side, it is difficult for the court to assess what is the correct realizable value of an asset in a public auction i.e. conducted by a financial institution. In view of the above, there is no merit in the contention of the petitioner warranting interference by this Court that the property was sold for a lower price.

Accordingly, the writ petition is dismissed. No costs.

S. ANANDA REDDY, J.

Dated: 19..07..2005.

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To

1 The General Manager,

The Andhra Pradesh State Finance Corporation,

Having its Head Office at P.B.No. 165, D.No.5-9-194,
Chirag Ali Lane, Hyderabad.

2 The Senior Branch Manager,

The Andhra Pradesh State Finance Corporation,

P.B.No.7, D.No. 4-1-139/1, Palakonda Road,
Srikakulam Branch, Srikakulam.

3 J. Manmadha Rao, S/o Tavudu,
Main Road, Tekkali, Srikakulam District.

4 Two CD copies

5 One CC to MR.MURTHY